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5 Attorneys for Defendant
 6 SILICON VALLEY ANIMAL CONTROL AUTHORITY

7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 IN AND FOR THE COUNTY OF SANTA CLARA

10

11 LEE JACKSON and KENNETH JACKSON,) Case No.: 107CV079050
12 Plaintiffs,) [PROPOSED] ORDER
13 v.) SUSTAINING DEFENDANT
14 SILICON VALLEY ANIMAL CONTROL) SILICON VALLEY ANIMAL
15 AUTHORITY, CITY OF SANTA CLARA, CITY) CONTROL AUTHORITY'S
16 OF CAMPBELL, HUMANE SOCIETY SILICON) DEMURRER AND DISMISSING
17 VALLEY DOES 1 TO 20,) PLAINTIFF'S COMPLAINT
18 Defendants.) Date: September 25, 2007 Time: 9:00 a.m. Dept.: 22 Complaint filed: January 29, 2007

BY FAX

19 Defendant SILICON VALLEY ANIMAL CONTROL AUTHORITY's ("Defendant")
 20 demurrer to plaintiff LEE JACKSON and KENNETH JACKSON's ("Plaintiffs") complaint filed in this
 21 action came on regularly for hearing in Department 22 of this Court on September 22, 2007. Low, Ball
 22 & Lynch appeared on behalf of Defendant, and _____ appeared on behalf of
 23 Plaintiffs.

24 Having read and considered all papers submitted by the parties in regard to Defendant's
 25 demurrer, and having heard all oral argument presented by the parties relating thereto, this Court rules as
 26 follows:

27 1. Defendant's general demurrer to Plaintiffs' entire complaint is sustained without leave to
 28 amend pursuant to Code of Civil Procedure § 430.10(e), because Plaintiffs' complaint fails to state facts

1 sufficient to constitute any cause of action against Defendant.

2 2. Defendant's general demurrer to Plaintiffs' first cause of action for general negligence is
3 sustained without leave to amend pursuant to Code of Civil Procedure §§ 430.10(e) and 430.50(a),
4 because Plaintiff's complaint fails to state facts sufficient to constitute a cause of action for general
5 negligence against Defendant.

6 3. Defendant's general demurrer to Plaintiffs' third cause of action for negligent hiring is
7 sustained without leave to amend pursuant to Code of Civil Procedure §§ 430.10(e) and 430.50(a),
8 because Plaintiff's complaint fails to state facts sufficient to constitute a cause of action for negligent
9 hiring against Defendant.

10 4. Defendant's general demurrer to Plaintiffs' fourth cause of action for negligent infliction
11 of emotional distress is sustained without leave to amend pursuant to Code of Civil Procedure
12 §§ 430.10(e) and 430.50(a), because Plaintiff's complaint fails to state facts sufficient to constitute a
13 cause of action for negligent infliction of emotional distress against Defendant.

14 5. Defendant's general demurrer to Plaintiffs' fifth cause of action for assault and battery is
15 sustained without leave to amend pursuant to Code of Civil Procedure §§ 430.10(e) and 430.50(a),
16 because Plaintiff's complaint fails to state facts sufficient to constitute a cause of action for assault and
17 battery against Defendant.

18 6. Defendant's general demurrer to Plaintiffs' sixth cause of action for intentional infliction
19 of emotional distress is sustained without leave to amend pursuant to Code of Civil Procedure
20 §§ 430.10(e) and 430.50(a), because Plaintiff's complaint fails to state facts sufficient to constitute a
21 cause of action for intentional infliction of emotional distress against Defendant.

22 7. Defendant's general demurrer to Plaintiffs' seventh cause of action for conversion is
23 sustained without leave to amend pursuant to Code of Civil Procedure §§ 430.10(e) and 430.50(a),
24 because Plaintiff's complaint fails to state facts sufficient to constitute a cause of action for conversion
25 against Defendant.

26 8. Defendant's general demurrer to Plaintiffs' eighth cause of action for violation of civil
27 rights pursuant to 42 U.S.C. § 1983 is sustained without leave to amend pursuant to Code of Civil
28 Procedure §§ 430.10(e) and 430.50(a), because Plaintiff's complaint fails to state facts sufficient to

constitute a cause of action for violation of civil rights pursuant to 42 U.S.C. § 1983 against Defendant.

9. Because the Court has sustained the Defendant's demurrer to the entire complaint without leave to amend, Plaintiffs' complaint against the Defendant in this action is hereby dismissed with prejudice.

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

1 MARK F. HAZELWOOD, # 136521
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ENDORSED

2001 AUG 23 P 2:44

8TH FLOOR, COURT OF THE SUPERIOR COURT
COUNTY OF SANTA CLARA, CALIFORNIA
RECEIVED
A. Tlas
FAX

5 Attorneys for Defendant
6 SILICON VALLEY ANIMAL CONTROL AUTHORITY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SANTA CLARA

10
11 LEE JACKSON and KENNETH JACKSON,) Case No.: 107CV079050

12 Plaintiffs,)

13 v.)

14 SILICON VALLEY ANIMAL CONTROL)
15 AUTHORITY, CITY OF SANTA CLARA, CITY)
16 OF CAMPBELL, HUMANE SOCIETY SILICON)
17 VALLEY DOES 1 TO 20,)

Defendants.)

) PROOF OF SERVICE
(Demurrer)

BY FAX

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Jackson v. Silicon Valley Animal Control Authority, et al.
Santa Clara County Superior Court Case No.: 107CV079050

PROOF OF SERVICE

I am over the age of eighteen (18) years and not a party to the within action. I am employed at Low, Ball & Lynch, 505 Montgomery Street, 7th Floor, San Francisco, California 94111.

On the date indicated below, I served the following documents enclosed in a sealed envelope on the listed addresses:

DOCUMENT: DEFENDANT SILICON VALLEY ANIMAL CONTROL AUTHORITY'S:

- NOTICE OF DEMURRER TO PLAINTIFF'S COMPLAINT;
- DEMURRER TO PLAINTIFF'S COMPLAINT;
- MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
THEREOF;
- REQUEST FOR JUDICIAL NOTICE IN SUPPORT THEREOF; and
- [PROPOSED] ORDER SUSTAINING DEFENDANT SILICON
VALLEY ANIMAL CONTROL AUTHORITY'S DEMURRER
AND DISMISSING PLAINTIFF'S COMPLAINT

ADDRESSES:

Stuart M. Wilson, Esq.
1671 The Alameda, Suite 300
San Jose, CA 95126
Telephone: 408/293-8400
Facsimile: 408/293-0714

- (BY MAIL)** I placed a true copy, enclosed in a sealed, postage paid envelope, and deposited same for collection and mailing at San Francisco, California, following ordinary business practices, addressed as set forth below.
 - (BY FACSIMILE)** I caused the said document to be transmitted by Facsimile transmission to the number indicated after the addresses noted above or on the attachment herein.
 - (BY OVERNIGHT COURIER)** I caused each such envelope addressed to the parties to be deposited in a box or other facility regularly maintained by the overnight courier or driver authorized by the overnight courier to receive documents.

I am readily familiar with this law firm's practice for the collection and processing of documents for regular and certified mailing, overnight mail, and facsimile transaction, and said document(s) are deposited with the United States Postal Service or overnight courier depository on the same day in the ordinary course of business.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California on August 23, 2007.

August 22, 2007

/ Jackson
(P)

1 MARK F. HAZELWOOD, # 136521
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 3 LOW, BALL & LYNCH
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ENDORSED

2007 AUG 23 P 2:52

KEN TOWER, CLERK OF THE SUPERIOR COURT
COUNTY OF SANTA CLARA
BY A. Ilas, Clerk

5 Attorneys for Defendant
 6 SILICON VALLEY ANIMAL CONTROL AUTHORITY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 IN AND FOR THE COUNTY OF SANTA CLARA

11 LEE JACKSON and KENNETH JACKSON,) Case No.: 107CV079050
 12 Plaintiffs,) DEFENDANT SILICON VALLEY
 13 v.) ANIMAL CONTROL
 14 SILICON VALLEY ANIMAL CONTROL) AUTHORITY'S NOTICE OF
 15 AUTHORITY, CITY OF SANTA CLARA, CITY) MOTION AND MOTION TO
 16 OF CAMPBELL, HUMANE SOCIETY SILICON) STRIKE PORTION OF
 17 VALLEY DOES 1 TO 20,) PLAINTIFFS' COMPLAINT
 18 Defendants.) Date: September 25, 2007
 19) Time: 9:00 a.m.
 20) Dept.: 22
 21) Complaint filed: January 29, 2007

BY FAX

22 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

23 NOTICE IS HEREBY GIVEN, that on September 25, 2007, at 9:00 a.m., in Department 22 of
 the above-entitled Court, defendant SILICON VALLEY ANIMAL CONTROL AUTHORITY
 ("Defendant") will move the Court to strike the following portion of the complaint filed in this action by
 plaintiffs LEE JACKSON and KENNETH JACKSON ("Plaintiffs"), pursuant to Code of Civil
 Procedure §§ 435(b)(1), 431.10(b)(3), and 436(a), without leave to amend:

- 24 1. Plaintiffs' Exemplary Damages Attachment with respect to Defendant: Wherein
 25 Plaintiffs seek to recover exemplary damages from Defendant, alleging that
 26 Defendant was guilty of malice, fraud and oppression. (Complaint at 13.)

27 This motion is made on grounds that the above-described portion of Plaintiff's complaint is an

1 immaterial allegation. (C.C.P. §§ 435(b)(1), 431.10(b)(3), and 436(a).) This motion is further based
2 upon this Notice, the Memorandum of Points and Authorities filed herewith, the Request for Judicial
3 Notice and all exhibits attached thereto filed herewith, all papers in support of the City Defendants'
4 demurrer filed concurrently herewith, and upon such oral and/or documentary evidence as may be
5 presented at the hearing on this motion.

6

7 Dated: August 23, 2007.

8 LOW, BALL & LYNCH

9

10 By 

11 MARK F. HAZELWOOD
12 DIRK D. LARSEN
13 Attorneys for Defendant
14 SILICON VALLEY ANIMAL CONTROL
15 AUTHORITY

21

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ENDORSED

2007 AUG 23 P 2:52

KIRKTON, CLIFF, ET AL. VS. THE SILICON VALLEY
COUNTY OF SANTA CLARA
BY A. Ilas

5 Attorneys for Defendant
6 SILICON VALLEY ANIMAL CONTROL AUTHORITY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SANTA CLARA

11 LEE JACKSON and KENNETH JACKSON,

) Case No.: 107CV079050

12 Plaintiffs,

) DEFENDANT SILICON VALLEY
13 v.) ANIMAL CONTROL
14) AUTHORITY'S MEMORANDUM
15) OF POINTS AND AUTHORITIES
16) IN SUPPORT OF MOTION TO
17) STRIKE PORTION OF
18) PLAINTIFFS' COMPLAINT

SILICON VALLEY ANIMAL CONTROL
AUTHORITY, CITY OF SANTA CLARA, CITY
OF CAMPBELL, HUMANE SOCIETY SILICON
VALLEY DOES 1 TO 20,

17 Defendants.

)
Date: September 25, 2007
Time: 9:00 a.m.
Dept.: 22

BY FAX

Complaint filed: January 29, 2007

19 I. INTRODUCTION AND RELIEF SOUGHT

20 This lawsuit arises out of allegations that defendants unlawfully entered plaintiff Lee Jackson and
21 Kenneth Jackson's ("Plaintiffs") motor home, seized Plaintiffs' pet animals, detained Plaintiffs and
22 battered plaintiff Lee Jackson on December 19, 2005. (Complaint.) As Plaintiffs correctly
23 acknowledge, defendant SILICON VALLEY ANIMAL CONTROL AUTHORITY is a public entity.
24 (Complaint at 2.)

25 Pursuant to Code of Civil Procedure §§ 435(b)(1), 431.10(b)(3), and 436(a), Defendant moves
26 the Court to strike the following portion of Plaintiffs' complaint (the "Complaint") without leave to
27 amend:

28 1. Plaintiffs' Exemplary Damages Attachment with respect to Defendant: Wherein

1 Plaintiffs seek to recover exemplary damages from Defendant, alleging that
 2 Defendant was guilty of malice, fraud and oppression. (Complaint at 13.)

3 For purposes of this motion to strike, Defendant incorporates by reference in their entirety, the
 4 arguments set forth in the memorandum of points and authorities in support of its demurrer, concurrently
 5 filed herewith. (*See* Defendant's Memorandum of Points and Authorities In Support of Demurrer, filed
 6 concurrently herewith.) "A notice of motion to strike...must be noticed for hearing and heard at the same
 7 time as the demurrer." (Rule 3.1322(b) of the Cal. Rules of Court, also see C.C.P. §435(b)(3).)

8 **II. APPLICABLE LAW AND ARGUMENT**

9 **A. Legal Grounds for Motion to Strike.**

10 Code of Civil Procedure §435 provides, in pertinent part:

- 11 (b)(1) Any party, within the time allowed to respond to a pleading may serve and file a
 12 notice of motion to strike the whole or any part thereof. . .

13 Code of Civil Procedure §431.10 provides, in pertinent part:

- 14 (b) An immaterial allegation in a pleading is any of the following:
 15 (3) A demand for judgment requesting relief not supported by the allegations
 16 of the complaint . . .

17 Code of Civil Procedure §436 provides:

18 The court may, upon a motion made pursuant to section 435, or at any time in its discretion, and
 19 upon terms it deems proper:

- 20 (a) Strike out any irrelevant, false, or improper matter inserted in any pleading.

21 **B. Plaintiffs' Request for Exemplary Damages is not Supported by the Allegations in 22 the Complaint.**

23 A motion to strike is the proper method for removing damages claims that are not supported by
 24 the cause of action pleaded. (*Cal. Practice Guide: Civ. Proc. Before Trial (The Rutter Group)*, p. 7-65,
 25 § 7:182.) Here, as discussed below, neither Plaintiffs' state-law causes of action nor their federal cause
 26 of action support the recovery of exemplary damages against Defendant, which Plaintiffs acknowledge is
 27 a public entity. (*See* Complaint at 2.)

28 / / /

1 **1 The Silicon Valley Animal Control Authority, a Public Entity, is not Liable**
 2 **for Exemplary Damages under California Law.**

3 Government Code § 818 provides, in pertinent part: “[n]otwithstanding any other provision of
 4 law, a public entity is not liable for . . . damages imposed primarily for the sake of example and by way
 5 of punishing the defendant.” According to Government Code § 811.2, a “public entity” includes “the
 6 State, the Regents of the University of California, a county, city, district, public authority, public agency,
 7 and any other political subdivision or public corporation in the State.” As Plaintiff’s Complaint appears
 8 to acknowledge, Defendant fits this definition of “public entity.” (See Complaint at 2.) As a public
 9 entity, the Silicon Valley Animal Control Authority is thus not liable for punitive or exemplary damages
 10 under any of Plaintiff’s state-law causes of action against it (first, third, fourth, fifth, sixth and seventh
 11 causes of action). Accordingly, Plaintiffs’ “Exemplary Damages Attachment” on page 13 of the
 12 Complaint should be stricken with respect to the Silicon Valley Animal Control Authority.

13 **2 Local Governing Bodies Sued Under 42 U.S.C. § 1983 Are Immune from**
 14 **Punitive Damages.**

15 As Plaintiff correctly acknowledges, the Silicon Valley Animal Control Authority is a public
 16 entity. (Complaint at 2.) Plaintiffs eighth cause of action for violation of civil rights was brought
 17 pursuant to 42 U.S.C. § 1983. (Complaint at 11.) Local governing bodies are immune from punitive
 18 damages in suits brought under § 1983. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271
 19 (1981). Accordingly, Defendant is immune from punitive damages for the § 1983 cause of action as a
 20 matter of law. The “Exemplary Damages Attachment” on page 13 of the Complaint should thus be
 21 stricken with respect to the Silicon Valley Animal Control Authority.

22 **III. CONCLUSION**

23 For the reasons stated above, defendant SILICON VALLEY ANIMAL CONTROL
 24 AUTHORITY respectfully requests that the “Exemplary Damages Attachment” to Plaintiff’s Complaint
 25 be stricken, with respect to defendant SILICON VALLEY ANIMAL CONTROL AUTHORITY, without
 26 leave to amend pursuant to Code of Civil Procedure §§ 435(b)(1), 431.10(b)(3), and 436(a).

27 ///

28 ///

1 Dated: August 23, 2007.

2
3 LOW, BALL & LYNCH

4 By D.L.

5 MARK F. HAZELWOOD
DIRK D. LARSEN
6 Attorneys for Defendant
SILICON VALLEY ANIMAL CONTROL
AUTHORITY

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ENDORSED

2007 AUG 23 P 2:52

5 Attorneys for Defendant
6 SILICON VALLEY ANIMAL CONTROL AUTHORITY

ENCL: COPY OF THE PLAINTIFF'S COMPLAINT
CONT'D/ATT'D BY A. ILIAS
RE: 107CV079050

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SANTA CLARA

11 LEE JACKSON and KENNETH JACKSON,) Case No.: 107CV079050
12 Plaintiffs,)
13 v.) DEFENDANT SILICON VALLEY
14 SILICON VALLEY ANIMAL CONTROL) ANIMAL CONTROL
15 AUTHORITY, CITY OF SANTA CLARA, CITY) AUTHORITY'S REQUEST FOR
16 OF CAMPBELL, HUMANE SOCIETY SILICON) JUDICIAL NOTICE IN SUPPORT
17 VALLEY DOES 1 TO 20,) OF MOTION TO STRIKE
Defendants.) PORTION OF PLAINTIFFS'
18) COMPLAINT

BY FAX
Date: September 25, 2007
Time: 9:00 a.m.
Dept.: 22

Complaint filed: January 29, 2007

19 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

20 Pursuant to Evidence Code §§ 452 and 453, and without admitting to the truth any of the
21 allegations stated therein, defendant SILICON VALLEY ANIMAL CONTROL AUTHORITY
22 respectfully requests that the Court take judicial notice of the genuineness of plaintiff LEE JACKSON
23 and KENNETH JACKSON's complaint filed in this action on January 29, 2007. A true and correct
24 copy of said document is attached hereto as Exhibit "1."

25 The court may further take judicial notice of any records of any court of the state. (Evidence
26 Code § 452(d).) When a party requests that the court take judicial notice of such matters and gives the
27 adverse party sufficient notice of the request to enable the adverse party to meet the request and
28 furnishes the court with sufficient information to enable it to take judicial notice of the matter, judicial

1 notice is mandatory. (Evidence Code § 453.)
2
3

Dated: August 23, 2007.

4 LOW, BALL & LYNCH
5
6 By 
7 MARK F. HAZELWOOD
8 DIRK D. LARSEN
9 Attorneys for Defendant
10 SILICON VALLEY ANIMAL CONTROL
11 AUTHORITY
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